

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, CONCURRING IN PART**

*Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers;
Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio
Services; Report and Order; WT Docket Nos. 05-265 and 00-193*

I am thrilled that we are at last tackling the long-simmering issue of roaming. While we do not resolve all of the key issues here today, particularly broadband roaming, this is a major step forward on an issue I have long believed deserves our attention. I have spoken often about my concern with the competitiveness of the commercial mobile radio service (CMRS) wholesale market and the Commission's need to reexamine our roaming obligations. So I am particularly pleased that after many fits and starts over the past several years, we finally are putting in place specific automatic roaming obligations on CMRS providers.

While some will say that this was a dispute between large and small carriers, I see this simply as a win for consumers. Our automatic roaming obligation will help all consumers have access to better coverage and service availability no matter where they live and where they travel. No customer should have to see the words "No Service" on their wireless device when there is a compatible network available.

Many argue that given the competitiveness of the CMRS retail marketplace, there is no need for Commission intervention. There are two flaws in that reasoning.

First, especially in light of the continuing consolidation in the market, just because a market is competitive doesn't mean we shouldn't take steps to ensure it remains that way. Nothing is more fundamental than interconnection to our mission, and roaming is in many ways how the wireless world interconnects.

Second, I have been increasingly concerned about the competitiveness of the CMRS wholesale market as compared to five years ago. Concerns about roaming have become more widespread and more vocal over the past several years. Whether in the context of recent mergers or other rulemakings, the Commission is hearing regularly from small and mid-size carriers who are becoming increasingly frustrated with their ability to negotiate automatic roaming agreements with larger regional and nationwide carriers for the full range of CMRS services. Not surprisingly, consolidation in the wireless industry over the past few years has only served to amplify existing concerns about the current state of roaming practices.

A critical distinction between the wholesale and retail market is that the network technology of a carrier interested in roaming even further limits the choice of potential roaming partners in a given market. For example, it is difficult for a carrier who employs GSM technology to roam on a CDMA network. It is like a vegetarian dining at a restaurant with four options on the menu, but only having the choice of the one that does not have meat. Just because there are four or five wireless options for consumers doesn't mean that carriers have that many choices about with whom they can choose to roam.

But while we place an important piece in clarifying that automatic roaming is subject to the common carrier provisions of Title II of the Act, including Sections 201 and 202, I remain concerned that we have not finished the puzzle by extending our automatic roaming requirement to all data services. Unfortunately, our rushed effort to reclassify broadband services as Title I services has taken the Commission outside the ambit of the core legal protections and grounding afforded by Congress in Title II. While our proceeding should be an “automatic” opportunity to include broadband services under our roaming approach, we are now presented with some unnecessarily challenging questions to our new and unsettled legal and policy framework for broadband services.

As I warned earlier this year in our wireless broadband reclassification item, we must be careful in drawing an unnecessarily bright line between wireless broadband services and commercial mobile services and the regulatory protections that come with CMRS status. Indeed, our own item goes to great length to limit automatic roaming to services that are interconnected to the public-switched telephone network, but then turns around and (rightly) includes non-interconnected text messaging and push-to-talk services in the automatic roaming services.

Rather than look for ways to narrow the automatic roaming obligation, the public interest would be much better served if we were to consider how best to frame the roaming requirement to include broadband. With the stroke of a pen, the Commission could have taken the specific step of enhancing the experience of consumers who are interested in having access to high-speed wireless services wherever they travel. As we become an increasingly mobile and broadband society, we are missing a real opportunity to improve broadband availability for American consumers through an automatic data roaming obligation.

I am very pleased, however, of the willingness of Chairman Martin and my colleagues to include a Further Notice of Proposed Rulemaking on the issue of extending this roaming obligation to other non-interconnected services or features, including information services. It is critical that we address this issue in the near term. Consumers place great value on their ability to seamlessly access their wireless broadband services and it is our job here at the Commission to step in and ensure that consumers have access to both voice and data when they leave their home service area.

For all of these reasons, while I strongly support our decision to adopt a specific rule to ensure the continued development of automatic roaming services, I approve in part and concur in part to this Report and Order.